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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 GENE A. ALLEN,

Case No. 3:14-cv-00510-RCJ-VPC

10 v. Petitioner,

ORDER

11 JAMES G. COX, et al.,

12 Respondents.

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14 This is a habeas matter under 28 U.S.C. § 2254 in which petitioner Gene A.  
15 Allen, represented by counsel, alleges violations of his due process rights in his parole  
16 hearings (ECF No. 44). On March 8, 2017, this court granted respondents' motion to  
17 dismiss the petition as wholly unexhausted (ECF No. 76).

18 The court directed that petitioner had **thirty (30) days** to either: (1) inform this  
19 court in a sworn declaration that he wishes to dismiss this petition without prejudice in  
20 order to return to state court to exhaust his unexhausted claims; OR (2) file a motion for  
21 a stay and abeyance, asking this court to hold his federal petition in abeyance while he  
22 returns to state court to exhaust his unexhausted claims.

23 Instead, Allen filed a notice of appeal with the Ninth Circuit Court of Appeals  
24 (ECF No. 89). The court of appeals dismissed the appeal for lack of jurisdiction on  
25 August 15, 2017 (ECF No. 88).

26 Allen has now filed a *pro se* motion that he has styled as a motion to dismiss  
27 counsel (ECF No. 91). He makes the bare assertion that there "appears to be an  
28 unresolved conflict of interest," yet—as this court has stated in earlier orders—he has

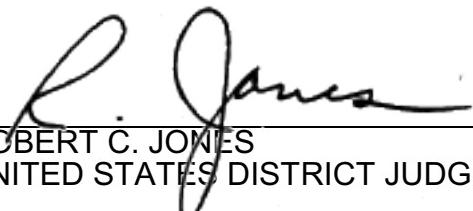
1 pointed to no conflict with his current counsel whatsoever. Therefore, the motion to  
2 dismiss counsel shall be denied. Now that Allen's appeal has been dismissed, the court  
3 shall grant Allen—through is counsel—thirty (30) days to either voluntarily dismiss this  
4 unexhausted petition or move for a stay and abeyance.

5           **IT IS THEREFORE ORDERED** that petitioner's motion to dismiss counsel (ECF  
6 No. 91) is **DENIED**.

7           **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** to either:  
8 (1) inform this court in a sworn declaration that he wishes to dismiss this petition without  
9 prejudice in order to return to state court to exhaust his unexhausted claims; OR (2) file  
10 a motion for a stay and abeyance, asking this court to hold his federal petition in  
11 abeyance while he returns to state court to exhaust his unexhausted claims. If  
12 petitioner chooses to file a motion for a stay and abeyance, or seek other appropriate  
13 relief, respondents may respond to such motion as provided in Local Rule 7-2.

14           **IT IS FURTHER ORDERED** that if petitioner fails to respond to this order within  
15 the time permitted, this case may be dismissed.  
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17           DATED: 20th day of November, 2017.  
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20 ROBERT C. JONES  
21 UNITED STATES DISTRICT JUDGE  
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